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FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-87
RAYMOND W. CLANTON	)	File No. BPH-911216MC
LOREN F. SELZNICK	)	File No. BPH-911216MD
For Construction Permit	)	
for a new FM Station on	)	
Channel 279A in El Rio,	)	
California	)	

To: Administrative Law Judge  
John M. Frysiak

REPLY TO OPPOSITION TO PETITION TO ENLARGE ISSUES

Raymond W. Clanton, by his attorney, respectfully replies to the "Opposition of Selznick to Petition to Enlarge", filed by Loren F. Selznick on September 16, 1993, in the above-captioned proceeding. In support thereof, the following is shown.

In his petition, Clanton sought an issue as to whether Selznick's initial financial certification was proper as well as an issue as to whether her improper certification represented a deliberate misrepresentation. Clanton stated that Selznick exchanged no documentation which demonstrated that she had a loan commitment from Joseph Dailey, the source of the necessary \$360,070 needed to construct and operate her station for three months without revenue. Clanton quoted from Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301), 4 FCC Rcd 3853 (1989)

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(hereinafter "Revision Order"), to demonstrate that an applicant may not certify its financial qualifications unless all its financial documentation has been completed. This was a change from the procedure enunciated in Northampton Media Associates, 4 FCC Rcd 5517, 5519 (1989), whereby applicants who filed on a previous edition of Form 301 had been permitted to create documentation subsequent to their certification.

In support of his request for a misrepresentation issue, Clanton noted that Selznick is herself an attorney, has been represented by experienced communications counsel throughout this proceeding, and has experience in radio. Clanton concluded that Selznick could not be considered to be a naive applicant who was unaware of the Commission's standards for financial qualifications, and thus her false certification should be considered a deliberate misrepresentation.

In her Opposition, Selznick refers to no case involving applications filed on the same edition of Form 301 as was her own. In addition to Northampton, supra, whose holding was expressly altered in the Revision Order, Selznick cites only Pleasant Hope Broadcasting Co., L. P., 6 FCC Rcd 6553 (Rev. Bd. 1991), on this question. Pleasant Hope also involved an application filed on the previous version of Form 301, and therefore is not applicable to Selznick's certification.<sup>1</sup>

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<sup>1</sup> Here, the Review Board noted via a parenthetical word in paragraph 12 that the policy of not requiring written documentation of finances applied only to the prior version of Form 301.

Selznick fails to address the Commission's reaffirmation of the documentation requirement in Report and Order in MM Docket No. 91-347, 7 FCC Rcd 5074, n. 24 (1992). Hence, her bold assertion in paragraph 2 of her opposition, "[I]t is irrelevant that there is no copy of a 1991-generated document in existence today," is completely wrong! Simply put, Selznick provides no basis to ignore the specific mandate of the Commission that she have written documentation in hand when she makes her financial certification.

In addition to lacking documentation of her financing when she filed her application, Selznick has not demonstrated even oral assurance of financing in 1991. The only evidence is Mr. Dailey's statement that, "I gave her reasonable assurance that I would provide the funds necessary to construct the station and operate it for three months without revenue." There is no indication that Mr. Dailey is aware of the Commission's standards for reasonable assurance of financing. He makes no mention of interest rate, repayment terms, or security for this loan. As Clanton demonstrated in his petition, there is no reasonable assurance under Commission policy absent agreement on all these items.<sup>2</sup> Mr. Dailey's use of the term "reasonable assurance" in his August 27, 1993, affidavit does not mean that Selznick did in fact

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<sup>2</sup> Selznick calls the cases cited by Clanton in his petition as "inapposite", but does not explain why. The standards apply equally whether an individual or a bank is the lender.

have reasonable assurance as defined by the Commission.

Selznick goes on to state that Mr. Dailey's personal financial statement was available to her via the office computer system and that she had "free access" to it. The fact that Dailey's financial statement was to be found somewhere among myriad documents on the firm's computer system does not show that Selznick located it and reviewed it. It is noteworthy that she does not come right out and state that she actually reviewed Dailey's financial statement before she certified her application.

Accordingly, there is no reason to believe that Selznick did in fact locate and review Dailey's financial statement in 1991. Absent such review, she could not rely on any promise Dailey may have made. The fact that she was able subsequently to produce Dailey's financial statement from that period does not excuse her failure to review it at the time of certification.<sup>3</sup>

To recapitulate, Selznick's initial financial certification was incorrect for at least four reasons: (1) She lacked documentation of the loan; (2) She did not have even oral assurance of the terms of the loan; (3) She was not personally familiar with the balance sheet of the proposed lender; (4)

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<sup>3</sup> Moreover, Dailey's 1991 financial statement fails to demonstrate the necessary \$361,000 in net liquid assets. He shows cash of \$218,000 and salary receivable of \$50,000. The rest of his listed assets do not count as liquid assets under the Commission's analysis. His debts total over \$1,000,000. Hence he had no liquid assets.

The proposed lender did not have sufficient net liquid assets to provide the loan.

Selznick did not directly address the allegation of misrepresentation. However, she reaffirmed that she is a practicing attorney in New York, and did not deny that she was fully familiar with the Commission's standards for financial qualification when she filed her application. Accordingly, grounds for a misrepresentation issue and liability for a forfeiture of \$25,000 are present.<sup>4</sup>

Clanton also demonstrated that Selznick is not now financially qualified. Clanton addressed Selznick's financial showing as modified by her tendered amendment filed August 30, 1993. However, that showing is moot, for the amendment was rejected. Accordingly, Selznick continues to have a financial requirement of \$360,070. At present, she claims only a \$40,000 commitment from Dailey and \$110,000 from her own assets. Even were she credited with these funds, she is about \$200,000 short.<sup>5</sup>

In sum, Selznick's opposition does not overcome Clanton's showing that she was not financially qualified when she so

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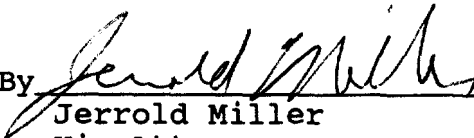
<sup>4</sup> See, e.g. Westerville Broadcasting Company Limited Partnership, FCC 93-447 (1993) (Press release of September 21, 1993, attached hereto).

<sup>5</sup> Given the large shortfall, Clanton will not address Selznick's contentions relating to sales commissions on her cooperative apartments, her moving expenses to California, and funds to live on for the first three months of station operation, other than to state that her arguments are factually speculative and legally incorrect.

certified in her application. It fails to demonstrate that her false certification was not a deliberate misrepresentation. Finally, Selznick's showing clearly indicates that she is not now financially qualified. Clanton's request for issues and potential forfeiture liability must be granted.

Respectfully submitted,

RAYMOND W. CLANTON

By   
Jerrold Miller  
His Attorney

September 22, 1993

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# NEWS

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Report No. DC-2495

ACTION IN DOCKET CASE

September 21, 1993

APPLICANT FOR NEW FM STATION AT WESTERVILLE, OH, NOTIFIED OF AN APPARENT  
LIABILITY FOR A FORFEITURE FOR MISREPRESENTING ITS FINANCIAL QUALIFICATIONS  
(MM DOCKET NO. 93-107)

The FCC has notified Westerville Broadcasting Company Limited Partnership (WBC) of an apparent liability for a forfeiture in the amount of \$25,000 for violation of the Commission's rules prohibiting applicants from making "any misrepresentation or willful material omission" in a written statement submitted to the Commission. WBC requested dismissal of its application after being notified by Administrative Law Judge Walter C. Miller of a potential forfeiture liability. The Judge then notified the Commission of the unresolved forfeiture question.

WBC was an applicant for a new FM station on Channel 280A in Westerville, OH. In the Order containing the notice of potential forfeiture liability, which also specified additional hearing issues, Judge Miller held that a substantial and material question had been raised as to whether WBC and its general partner, Freeman Edwards, had attempted to deceive the Commission concerning WBC's financial qualifications.

The Commission stated that certain statements in a pleading that WBC filed before Judge Miller with respect to WBC's financial qualifications were evidently deceitful and therefore, WBC is apparently liable for violating the rules.

Action by the Commission September 17, 1993, by Order (FCC 93-447).  
Chairman Quello, Commissioners Barrett and Duggan.

-FCC-

News Media contact: Patricia A. Chew at (202) 632-5050.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22 day of September, 1993  
a copy of the foregoing document was placed in the United States mail,  
first class postage prepaid, addressed to the following:

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